

Judicial Misconduct Complaint

Chief Judge Deanell Reece Tacha

Tenth Circuit Court of Appeals

Case Numbers: 05-4079 and 05-4222

Lisa Burke, Michael Carper, and on behalf of all others similarly situated, v. Utah Transit Authority, John English, Individually, Amalgamated Transit Union Local 382 and the United States Department of Labor

Complaint filed by Lisa Burke and Michael Carper

This is a continuation of the complaints filed against Utah District Court Judge Paul Cassell as well as the Tenth Circuit panel that heard the appeal of these two cases. The panel consisted of Tenth Circuit Judge Timothy Tymkovich, Senior Judge Robert McWilliams, and District Court Judge Claire Eagan of the Northern District of Oklahoma. The case was handled in a manner that the complainants consider to be extremely biased and prejudicial. Judge Tacha, as Chief Judge of the Tenth Circuit, apparently turned a blind eye to the actions of the judges involved in this case, both in district and circuit court. Complainants would like the Circuit Executive or spokesperson for the Tenth Circuit Court of Appeals to explain if it is accepted practice at the Tenth Circuit to deny due process to cases that are meritorious but perhaps contrary to the political ideology of the judges involved?

This complaint should be read in conjunction with the two previous complaints which detail the actions of the judges named. Also, a detailed account of the misconduct that Complainants allege can be found in the petition for en banc review, which was filed with the Tenth Circuit Court of Appeals. This petition was denied by the Tenth Circuit, which suggests that Judge Tacha and the active judges on the Tenth Circuit are not concerned about the denial of justice and due process to working class citizens. Apparently, protecting their own as well as the interests of the politically well connected are the main agendas of the judges on the Tenth Circuit. This is “judicial activism” at its worst and should sound an alarm to every American. Complainants intend to alert as many people as possible, including members of Congress as well as the media.

Complainants/Appellants are blue collar workers who had always held the judicial system in high regard. The experience of the Complainants has unfortunately confirmed a pervasive belief among the working class that justice is reserved for the politically well connected and powerful. There is apparently no oversight of the actions of judges within the Tenth Circuit. Since Judge Tacha is the Chief Judge of the Tenth Circuit she must take full responsibility for her lack of supervision.

Judge Tacha is, as of this writing, the president of the board of trustees of the American Inns of Court. In an online video on that organization’s website, Judge Tacha reminds members that it is their obligation to “ensure the success of this professional quest, a quest that is embodied by legal excellence, civility, ethics and professionalism.” Judge Cassell is listed, on this same website, as one of the officers (counselor) of the Aldon J. Anderson chapter of the American Inns of Court. None of the virtues espoused by Judge Tacha in her video were exhibited by any of the judges involved with this case.

In the October, 2006 issue of *The Federal Lawyer*, a feature story profiles Chief Judge Deanell Reece Tacha of the Tenth Circuit Court of Appeals. She states, "I'm very proud that our circuit is known as one that is, if not the most collegial, one of the most collegial in the country." Collegiality is important but justice is far more important. The fact that Judge Cassell regularly sits on Tenth Circuit panels suggests to Complainants that there has been an effort by Judge Tacha to protect Judge Cassell.

In the same article, Judge Tacha was reportedly deeply affected by the attack on the Alfred P. Murrah Federal Building in Oklahoma City. She traveled there a few days later to see the devastation. The article states that, "Despite her personal feelings about terrorism, when discussing her judicial philosophy, Tacha is careful to emphasize the Constitution's guarantee of a fair trial." Complainants maintain her lack of oversight and willingness to allow judges to deny law abiding Americans due process belies her assertion.

In an online article in *The Federalist Society*, dated Feb. 12, 2005, Judge Tacha is reported to have "detailed four broad themes in her remarks: the importance of public trust in the courts..." The Tenth Circuit does not promote this trust when it appoints a judge to hear a case that shares clerks with the very judge that has been accused of improprieties. *See complaint against panel; pg. 1, fn. 1.* Neither does it promote public trust when, of the other two judges assigned to review the case on appeal, one displays obvious bias and one is of questionable ability. Judge Tacha, as Chief Judge of the Tenth Circuit, has demonstrated that public trust is not a priority in her court.

It is very clear to Complainants that while Judge Tacha makes many public statements about the importance of ethics, professionalism, civility, public trust, etc. in the legal profession and the judiciary, in truth she neither exhibits these attributes herself nor demands them of the judges under her supervision. As the earlier complaint demonstrated, no civility was shown to Complainants' at the Tenth Circuit hearing, only bias. Moreover, the ruling issued by the panel was a blatant mischaracterization of the facts which ignored clear precedent and showed little professionalism.

Judge Tacha has spoken out publicly for a number of years about the need to increase the pay for federal judges. If the biased, shoddy and unsupervised performance of the judges within the Tenth Circuit are typical of the judiciary as a whole then Complainants submit that the present compensation is too much.

The Tenth Circuit does not allow parties to file complaints alleging bias regardless of the evidence. The United States Supreme Court accepts only a tiny fraction of the cases submitted each year. Thus, there is effectively no recourse against judges whose bias deprives average Americans of basic justice, due process and fundamental fairness. Judge Tacha has the duty as Chief Judge to ensure that each case handled by the Tenth Circuit is above reproach. An ethical Chief Judge would diligently avoid not only impropriety but even the appearance of impropriety. Judge Tacha failed to do this to the detriment of the American judicial system.

Signed:

Signatures on File

Lisa Burke

Michael Carper